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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,296	01/15/2004	Shelly Walter	2661.688US12	5170
7590 Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903		03/13/2008	EXAMINER TRAN LIEN, THUY	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 03/13/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/758,296

Applicant(s)

WALTER ET AL.

Examiner

Lien T. Tran

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-21, 45-47 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-21, 45-47, 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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Claims 1-3, 5-9, 11-16, 18-21, 45-47, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alessandro (EPA 0691078) in view of Stangroom, Vagani, McDaniel et al, Ricke et al and Kordic

Alessandro discloses a parbaked crust formed from a dough having the composition as set forth in the table on column 2. The crust is topped with topping and baked at temperature of 300-450 degree C. (see page 2)

Alessandro et al do not disclose the amount of oil as claimed, the dimension of the edge, a square or rectangular shape, edge having irregular profile such as sinusoidal or connected line segments, the degree of expansion as claimed, the surface area, thickness and weight as claimed.

Kordic discloses pizza pie mold. The mold can have a round, square or rectangular shape. (see col. 2 lines 7-10)

Vagani discloses a precooked pan pizza dough. Vagani discloses a dough containing 1.48% oil. (see col. 3 lines 60-67)

Stangroom discloses a method of making pizza. Stangroom teaches the pizza dough contains up to about 5% oil, preferably about 1-3%. (see col. 5 lines 25-42)

McDaniel et al disclose a yeast-raised pizza dough. They disclose doughs containing 1.73% or 1.16% oil (see examples 1,2)

Ricke et al disclose an ornamental design for pizza crust. The edge is scallop and has line segments.

It would have been obvious to use less or more amount of oil depending on the texture and the oil content wanted; this parameter would have been well within the

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determination of one in the art. Pizza dough having varying amounts of oil ranging from 4-5 (disclosed by Alessandro), to up to 5 (shown by Stangroom) to between 1-2% (as shown by McDainel et al and Vagani) are known as exemplified in the prior art listed in the rejection. It would have been obvious to one skilled in the art to vary the fat content within the known ranges shown by the prior art depending on the fat content, texture, flavor and taste desired. It is obvious the crust has the degree of expansion because expanding during baking is a natural occurrence of dough. The degree to which the dough expands depends on several factors such as the proofing time, the amount of yeast used, the amounts of ingredients in the formulation etc... Thus, it would have been within the skill of one in the art to determine the degree of expansion that gives the most optimum texture and taste. Such determination is within routine experimentation to obtain the most optimum product and optimization is within the skill of one in the art. It would have been obvious to one skilled in the art to shape the crust in any design wanted. This would have been an obvious matter of preference. Pizza crust having ornamental design is known in the art as exemplified by the Ricke et al disclosure. Variation in design without any effect on the functionality of the product would have been an obvious matter of choice. Ricke et al show pizza having a scallop edge with line segments. It would have been obvious to one skilled in the art to vary the appearance of the edge to obtain different pattern of pizza crust. This is a variation in design without any effect on the functionality of the product. Variation in design would have been an obvious matter of choice. When the edge is not a straight line but a different pattern as shown by Ricke et al, then part of the surface departs from the

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planar surface of the crust. It would have been obvious to one skilled in the art to vary the edge and the degree of departure depending on the pattern desired. It is obvious the edge having a pattern will acquire toast mark when baked. It would have been to have these mark to resemble any product depending on the look wanted. It would have been obvious to form the edge in any dimension depending on the size of the crust desired. It would also have been obvious to vary the size of the pizza to have any varying surface area and weight and to vary the thickness depending on the type of crust wanted. If a thick, large crust is wanted, it would have been obvious to increase the thickness and the size to obtain the desired end result; it is also equally obvious to do the opposite or any variation in between. It is a matter of preference that is within the skill of one in the art. It would have been obvious to form the pizza in square or rectangular shape because such shape is well known for pizza as exemplified in the Kordic disclosure. Changing or forming in any particular shape would have been an obvious matter of preference. When the crust has a square shape, it is obvious that the crust will have a fourfold symmetry.

Claims 10, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alessandro (EPA 0691078) in view of Stangroom, Vagani, McDaniel et al, Kordic and Ricke et al as applied to claims 1-3, 5-9,11-16,18-21,45-47, 52, and further in view of Pesheck et al.

None of the references teaches applying breadcrumbs the surface of the crust.

Pesheck et al disclose a pastry system. They teach to coat the surface of the dough with a crisping agent such as bread crumb to avoid sogginess and facilitates the

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provision of crispness in the final dough product. The dough products include open-face dough such as pizza. (see col. 4 lines 45-50, col. 5 line 7, col. 6 lines 36-41)

It would have obvious to coat the crust with bread crumbs to enhance the crispness of the product as taught by Pesheck et al. Bread crumb is notoriously well known to be used for such purpose as exemplified in the Pesheck et al disclosure. The amount depends on the degree of crispness desired and can readily be determined by one skilled in the art.

In the response filed 12/6/07, applicant argues the crust symmetry and registration means are entirely functional and provide efficient filling and reduced waste in pizza production. This argument is not persuasive; it is not clear what applicant deems as the functional aspect of the square or rectangular shape. In any event, rectangular and square shapes are notoriously known for making pizza as exemplified in the Kordic reference. One would only need to look in a pizza store to see a square or rectangular shape pizza. Thus, whatever function is attributed to the shape, it is obvious the prior art pizza product will have such function. As to the registration means to help position the crust on the conveyor. This is a function during processing and not a function in the final baked product. Furthermore, the registrations means is an indentation in the edge due to the shape of the edge and the prior art to Ricke et al teach such irregular shape. Applicant argues Ricke et al teach a circular shape. It is true that Ricke et al teach a circular shape but square and rectangular shapes are well in the art. Thus, it would have been obvious to one skilled in the art to make a square and rectangular shape having the edge as shown by Ricke et al when such designed is

wanted. If the pizza has a square or rectangular shape, then the product will have symmetry. Applicant states that the rejection has not provided why one skilled in the art would choose the specific composition for applicant's symmetrical pizza crust. The basis for this statement is unclear. The rejection clearly sets forth why one would choose the amount of oil and design as claimed. Applicant further argues the Kordic and Pescheck individually; however, the rejection is based on a combination of references. The Pescheck and Kordic references are not relied upon for teaching of the shape having the irregular edge.

Applicant's arguments filed 12/6/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 4, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794